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REPORT OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991

SECURITY COUNCIL
Forty-ninth year

Letter dated 25 July 1994 from the Permanent Representative of Spain to the United Nations addressed to the Secretary-General

Spain has firmly supported the principles and objectives of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, ever since that Tribunal was established by Security Council resolution 827 (1993), of 25 May 1993.

Therefore, in accordance with the provisions of paragraph 4 of resolution 827 (1993), and with a view to giving effect to that resolution and to the Statute of the Tribunal, the Spanish Parliament approved, and His Majesty the King promulgated, on 1 June, Organization Act 15/1994, concerning cooperation with the International Tribunal.

I am sending you attached the text of Organization Act 15/1994 with the request that you kindly arrange for its publication as an official document of the General Assembly and the Security Council.

(Signed) Juan A. YAÑEZ-BARNUEVO

* A/49/150.

ANNEX

Organization Act 15/1994 adopted by the Spanish Parliament on 1 June 1994

I. General provisions

OFFICE OF THE HEAD OF STATE

12552 ORGANIZATION ACT 15/1994 of 1 June on cooperation with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia

JUAN CARLOS I

KING OF SPAIN

To all who have the knowledge of these presents

Be it known: That the Courts have enacted, and I hereby approve, the following Organization Act:

STATEMENT OF REASONS

By its resolution 827 (1993), the United Nations Security Council established an International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia, and at the same time adopted the Tribunal's Statute.

Since the enabling provision underlying the resolution is Chapter VII of the Charter of the United Nations, there is no doubt that it is legally binding for all States in this international area.

Paragraph 4 of the resolution places upon all States the obligation to take any measures necessary under their domestic law to comply with the resolution and implement the Statute. It is not a matter of recognizing the competence of the Tribunal, as is customary in the case of other international tribunals, since such competence erga omnes already exists; rather, it is a question of adopting appropriate domestic measures, bearing in mind its special legal basis, which is a resolution of an international organization and not an international treaty.

The Act is based on a pre-existing body of conventional or customary law, the so-called rules of humanitarian law, embodied primarily in the Geneva Conventions or the Genocide Convention. The general view is that this conventional law has become part of customary law.

Since, from a material standpoint, much of the Statute is self-executing, the Act makes provision for its implementation only in respect of those matters which our Constitution stipulates must be the subject of Organization Acts.

Article 3 designates the Ministry of Justice as the central authority responsible for external relations with the Tribunal, while domestic judicial functions are concentrated in the National High Court, which already has exclusive competence in matters relating to extradition, the transfer of jurisdiction and the transfer of proceedings. All this is, of course, without prejudice to the general competence of the Ministry of Foreign Affairs and the domestic competence, where applicable, of the military courts.

Article 4 covers situations involving concurrent jurisdiction, including military jurisdiction, thus providing procedural complements to the principle of the primacy of the International Tribunal laid down in article 9 of the Statute. Furthermore, in keeping with this, the principle of non bis in idem is developed, although no reference is made to article 10, paragraph 2 (b), of the Statute since the situations envisaged would be unlikely to occur in Spain.

Article 6, guided by the Statute, deals with arrest. Speaking in the abstract, there should be no doubt as to the lawfulness of an arrest, on the one hand, because double charges normally will have been lodged against the accused and, on the other hand, because, in addition to the unilateral rules of international competence, there is a rule governing competence in this regard deriving from the Statute itself.

Articles 19 and 20 of the Statute constitute a significant departure from our rules on extradition in that they make no mention of extradition at all but refer to surrender or transfer of the accused to the International Tribunal. The report of the Secretary-General of the United Nations (para. 102) appears to clearly exclude extradition proceedings. This provision reflects previous views that Spain put forward regarding the simplification of extradition at the Funchal Conference of Ministers of Justice of the European Communities and which are currently being considered in the framework of the Coordination Committee of Senior Officials established under Title VI of the Treaty on European Union.

From all these factors it also appears that contumacious judgements are rejected.

Article 7.3 recognizes extraterritorial jurisdiction for the prosecution of offences of perjury before the International Tribunal, thus filling a lacuna in our laws, although such an innovation has already been preceded by a provision to that effect in the Statute of the Court of Justice of the European Communities and the rules of procedure of the Court.

Concerning the enforcement of sentences, some provisions of article 8 may not be immediately enforceable, since they are contingent upon Spain's issuing a specific declaration of its willingness to accept convicted persons.

Article 1. Duty to cooperate

Spain shall cooperate fully with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia (hereinafter referred to as "the International Tribunal"), established under resolution 827 (1993) of the Security Council of the United Nations.

Article 2. Bases

Cooperation shall be extended in accordance with the provisions of Security Council resolution 827 (1993), the Statute of the Tribunal, the present Act and, in the absence of specific provisions, the general criminal laws, both substantive and procedural.

Article 3. Competent authorities

1. Without prejudice to the competence of the Ministry of Foreign Affairs, the Ministry of Justice shall be the central authority responsible for considering requests for cooperation from the International Tribunal and other requests that may be submitted to it.

2. Each of the organs of the National High Court shall, within the areas of its jurisdiction, be exclusively responsible for cooperation with the International Tribunal.

Article 4. Concurrent jurisdiction

1. Where ordinary or military courts of Spain have jurisdiction under their respective organizational rules and rules of procedure to consider cases that fall within the scope of the Statute of the International Tribunal, they shall initiate or continue the judicial proceedings, as long as the International Tribunal does not prohibit them from doing so.

2. Upon receiving an application for prohibition, the judge or court shall suspend the judicial proceedings, and, without prejudice to their ability to continue to be seized of urgent proceedings, shall refer the case to the National High Court, which shall issue an order of prohibition in favour of the International Tribunal. The military judicial organs, for their part, shall refer the case, through the Central Military Court, to the National High Court.

3. The application may be rejected only where the matter does not come under the temporal or territorial jurisdiction of the International Tribunal.

4. No Spanish judge or court may create a conflict of jurisdiction with the International Tribunal. They shall confine themselves to stating the reasons that in their estimation form the basis of their own competence.

Article 5. Principle of "non bis in idem"

Persons tried in Spain for an offence under ordinary law may also be tried by the International Tribunal if the act is classified by the International Tribunal under the categories contained in the Statute of the International Tribunal.

Article 6. Arrest and transfer

1. Any person resident in Spain against whom an indictment has been confirmed shall, pursuant to an arrest warrant of the Trial Chamber of the International Tribunal, be taken into custody and informed of the charges against him by the central examining court of the National High Court.

2. The National High Court shall approve the transfer, without the need for formal extradition proceedings, and shall specify in its decision the maximum length of the pre-trial detention stipulated in Spanish law.

Article 7. Appearance before the International Tribunal

1. Persons summoned to appear before the International Tribunal as witnesses or experts shall be under the same obligation to appear as that provided for in Spanish law.

2. The Ministry of Justice shall advance the expenses necessary for such appearance.

3. Perjury before the International Tribunal shall be treated as the offence of perjury under criminal law and may be tried in Spain at the request of the International Tribunal.

4. Spain shall guarantee the immunity of persons in transit for the purpose of appearing before the International Tribunal.

Article 8. Enforcement of sentences

1. Should Spain declare, pursuant to article 27 of the Statute of the International Tribunal, its willingness to accept convicted persons, it shall specify in so doing that it will follow the sentence enforcement procedure and that such sentence may not exceed the maximum provided for in Spain for penalties involving deprivation of liberty.

2. The prisons oversight judges shall inform the National High Court of any significant incident regarding the enforcement of the sentence. The National High Court shall in turn inform the Ministry of Justice.

3. Whenever any pardon or commutation of sentence proceedings are initiated, the Ministry of Justice shall so inform the International Tribunal, since no decision can be taken until the International Tribunal rules on the matter, and the pardon or commutation may be denied if the International Tribunal so decides.

Single final provision. Duration

This Act shall remain in force until the International Tribunal is dissolved, without prejudice to the effects deriving from the implementation of articles 7.3 and 8.

Accordingly,

I hereby order all Spaniards, both individuals and authorities, to observe and enforce this Organization Act.

Madrid, 1 June 1994

JUAN CARLOS R.

FELIPE GONZALEZ MARQUEZ
Prime Minister